

SENATE BILL 186

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M3

2004 Regular Session
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By: **The President (By Request - Administration) and Senators Astle, Brinkley, Brochin, Currie, Della, Dyson, Greenip, Hafer, Harris, Hollinger, Hooper, Jacobs, Jimeno, Kittleman, Klausmeier, Lawlah, Middleton, Munson, Schrader, Stoltzfus, and Stone**

Introduced and read first time: January 23, 2004
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Brownfields Redevelopment Reform Act**

3 FOR the purpose of providing that certain applicants and certain properties may be
4 eligible to participate in the Voluntary Cleanup Program in the Maryland
5 Department of the Environment (MDE) under certain conditions; requiring
6 MDE to review certain standards in a certain time period; establishing certain
7 application fees under certain circumstances; altering certain application fees;
8 authorizing MDE to develop certain regulations; altering certain procedures for
9 applications to the Voluntary Cleanup Program; altering certain procedures for
10 public participation in MDE's process of approving response action plans;
11 establishing certain liability protection for certain participants receiving a no
12 further requirements notice; requiring certain persons to submit certain
13 information to a one-call system in Maryland; requiring certain persons to be
14 responsible for the cost of cleaning up a property under certain conditions;
15 authorizing the State to bring a civil action for punitive damage against certain
16 persons who fail to comply with certain orders under certain circumstances;
17 requiring MDE to approve a response action plan for a portion of a property
18 under certain conditions; requiring MDE to convene a certain work group;
19 authorizing certain agents or employees to enter certain private land in
20 Baltimore City under certain conditions; providing that certain persons and
21 contaminated properties are eligible for money from the Brownfields
22 Redevelopment Incentive Program in the Department of Business and Economic
23 Development; altering certain requirements for certain local governments to
24 participate in the program; altering the process for the distribution and use of
25 certain contributions; defining certain terms; and generally relating to the
26 Voluntary Cleanup Program and the Brownfields Redevelopment Incentive
27 Program.

28 BY adding to
29 Article - Environment
30 Section 7-266.1 and 7-506.1
31 Annotated Code of Maryland

1 (1996 Replacement Volume and 2003 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Environment

4 Section 7-501(e), (g), and (j), 7-505, 7-506, 7-509, 7-510(a), 7-511(a), 7-512(a),

5 7-514, and 7-515

6 Annotated Code of Maryland

7 (1996 Replacement Volume and 2003 Supplement)

8 BY repealing and reenacting, with amendments,

9 Article - Real Property

10 Section 12-111(f)

11 Annotated Code of Maryland

12 (2003 Replacement Volume and 2003 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article 83A - Business and Economic Development

15 Section 5-1401(j) and 5-1408(a)

16 Annotated Code of Maryland

17 (2003 Replacement Volume)

18 BY repealing and reenacting, with amendments,

19 Article - Tax - Property

20 Section 9-229(g)

21 Annotated Code of Maryland

22 (2001 Replacement Volume and 2003 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - Environment**

26 7-266.1.

27 (A) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN
28 EQUITY, ANY RESPONSIBLE PERSON WHO FAILS WITHOUT GOOD CAUSE TO COMPLY
29 WITH A FINAL ORDER OF THE STATE IN ACCORDANCE WITH THIS SUBTITLE MAY BE
30 LIABLE TO THE STATE FOR PUNITIVE DAMAGES.

31 (2) PUNITIVE DAMAGES MAY BE ASSESSED IN AN AMOUNT NOT TO
32 EXCEED THREE TIMES THE AMOUNT OF ANY COSTS INCURRED BY THE STATE AS A
33 RESULT OF SUCH FAILURE.

34 (3) A RESPONSIBLE PERSON SHALL BE ENTITLED TO A CONTESTED
35 CASE HEARING FOR A DETERMINATION WHETHER THE RESPONSIBLE PERSON HAS

1 FAILED WITHOUT GOOD CAUSE TO COMPLY WITH A FINAL ORDER OF THE STATE IN
2 ACCORDANCE WITH THIS SUBTITLE.

3 (4) PUNITIVE DAMAGES MAY BE CALCULATED ONLY ON THE COSTS
4 ARISING AFTER THE DATE A DETERMINATION IS MADE UNDER PARAGRAPH (3) OF
5 THIS SUBSECTION.

6 (B) THE STATE IS AUTHORIZED TO COMMENCE A CIVIL ACTION AGAINST ANY
7 PERSON TO RECOVER PUNITIVE DAMAGES IN ACCORDANCE WITH SUBSECTION (A)
8 OF THIS SECTION, WHICH SHALL BE IN ADDITION TO ANY COSTS RECOVERED FROM
9 THE PERSON IN ACCORDANCE WITH § 7-221 OF THIS SUBTITLE.

10 7-501.

11 (e) "Contamination" means a release, discharge, or threatened release of:

12 (1) [a] A controlled hazardous substance, as defined in § 7-201 of this
13 title; OR

14 (2) OIL, AS DEFINED IN § 4-401 OF THIS ARTICLE.

15 (g) (1) "Eligible property" means property OR A PORTION OF A PROPERTY
16 that is contaminated or perceived to be contaminated.

17 (2) "Eligible property" does not include property that is:

18 (i) On the national priorities list under § 105 of the federal act;

19 (ii) [Under] EXCEPT AS PROVIDED IN PARAGRAPH (3)(I) OF THIS
20 SUBSECTION, UNDER active enforcement; or

21 (iii) Subject to a controlled hazardous substances permit issued in
22 accordance with Title 7 of this article.

23 (3) (I) "ELIGIBLE PROPERTY" MAY INCLUDE A SITE UNDER ACTIVE
24 ENFORCEMENT IF:

25 1. ALL APPLICATIONS FILED IN CONNECTION WITH THE
26 PROPERTY ARE FILED BY INCULPABLE PERSONS; AND

27 2. ANY RESPONSE ACTION PLAN AND CLEANUP CRITERIA
28 APPROVED BY THE DEPARTMENT UNDER THIS SUBTITLE ARE AT LEAST AS
29 PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT AS THE REQUIREMENTS
30 OF ANY OUTSTANDING ACTIVE ENFORCEMENT ACTION.

31 (II) "Eligible property" includes sites listed on the Comprehensive
32 Environmental Response, Compensation, and Liability Information System.

33 (j) (1) "Inculpable person" means a person who:

1 (i) Has no prior or current ownership interest in an eligible
2 property at the time of application to participate in the Voluntary Cleanup Program;
3 and

4 (ii) Has not caused or contributed to contamination at the eligible
5 property at the time of application to participate in the Voluntary Cleanup Program.

6 (2) "Inculpable person" includes:

7 (I) [a] A successor in interest in an eligible property acquired from
8 an inculpable person, as defined in paragraph (1) of this subsection, if the successor in
9 interest does not have a prior ownership interest in the eligible property and, other
10 than by virtue of ownership of the eligible property, is not otherwise a responsible
11 person at the eligible property; AND

12 (II) NOTWITHSTANDING PARAGRAPH (1)(I) OF THIS SUBSECTION, A
13 PERSON WHO IS NOT CONSIDERED A RESPONSIBLE PERSON UNDER § 7-201(X)(2) OF
14 THIS TITLE.

15 7-505.

16 (a) (1) If the Department approves an applicant's status as an inculpable
17 person under § [7-506(b)(1)(i)1] 7-506(E)(1)(I) of this subtitle, the participant's status
18 as an inculpable person continues upon acquiring an interest in the eligible property.

19 (2) IF THE APPLICANT MEETS THE REQUIREMENTS OF § 7-506(A) OF THIS
20 SUBTITLE, THE DEPARTMENT SHALL APPROVE OR DISAPPROVE AN APPLICANT'S
21 STATUS AS AN INCULPABLE PERSON WITHIN 5 BUSINESS DAYS OF RECEIVING:

22 (I) A WRITTEN REQUEST FROM THE APPLICANT FOR AN
23 EXPEDITED DETERMINATION OF THE APPLICANT'S STATUS AS AN INCULPABLE
24 PERSON; AND

25 (II) A FEE OF \$2,000.

26 (b) Except as provided in subsection (c) of this section, an inculpable person is
27 not liable for existing contamination at the eligible property.

28 (c) An inculpable person shall be liable for:

29 (1) New contamination that the person causes or contributes to at the
30 eligible property; and

31 (2) Exacerbation of existing contamination at the eligible property.

32 7-506.

33 (a) To participate in the Program, an applicant shall:

34 (1) Submit an application, on a form provided by the Department, that
35 includes:

1 (i) Information demonstrating to the satisfaction of the
2 Department that the contamination did not result from the applicant knowingly or
3 willfully violating any law or regulation concerning controlled hazardous substances;

4 (ii) Information demonstrating the person's status as a responsible
5 person or an inculpable person;

6 (iii) Information demonstrating that the property is an eligible
7 property as defined in § 7-501 of this subtitle;

8 (iv) A detailed report with all available relevant information on
9 environmental conditions including contamination at the eligible property known to
10 the applicant at the time of the application;

11 (v) 1. An environmental site assessment that includes:

12 A. [established]ESTABLISHED Phase I [and Phase II] site
13 assessment standards and follows principles established by the American Society for
14 Testing and Materials and that demonstrates to the satisfaction of the Department
15 that the assessment has [adequately investigated all potential sources and areas of
16 contamination] BEEN CONDUCTED IN ACCORDANCE WITH THOSE STANDARDS AND
17 PRINCIPLES; AND

18 B. A PHASE II SITE ASSESSMENT IF THE DEPARTMENT
19 CONCLUDES AFTER REVIEW OF THE PHASE I SITE ASSESSMENT THAT THERE ARE
20 RECOGNIZED ENVIRONMENTAL CONDITIONS AS DEFINED BY THE AMERICAN
21 SOCIETY FOR TESTING AND MATERIALS; AND

22 2. FOR AN APPLICATION FOR A PORTION OF A PROPERTY IN
23 ACCORDANCE WITH § 7-501(G)(1) OF THIS SUBTITLE, AN ENVIRONMENTAL SITE
24 ASSESSMENT THAT HAS BEEN CONDUCTED FOR THE ENTIRE PROPERTY; and

25 (vi) A description, in summary form, of a proposed voluntary
26 cleanup project that includes the proposed cleanup criteria under § 7-508 of this
27 subtitle and the proposed future use of the property, if appropriate; and

28 (2) Pay to the Department:

29 (I) [an] AN INITIAL application fee of \$6,000[, unless the
30 Department determines that a lesser fee would be sufficient to cover the costs
31 described in subsection (d) of this section] WHICH THE DEPARTMENT MAY REDUCE
32 ON A DEMONSTRATION OF FINANCIAL HARDSHIP IN ACCORDANCE WITH
33 SUBSECTION (B) OF THIS SECTION; AND

34 (II) AN APPLICATION FEE OF \$2,000 FOR EACH APPLICATION
35 SUBMITTED SUBSEQUENT TO THE INITIAL APPLICATION FOR THE SAME PROPERTY.

36 (B) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ESTABLISH CRITERIA
37 FOR DETERMINING AN APPLICANT'S STATUS FOR A DEMONSTRATION OF FINANCIAL
38 HARDSHIP.

1 (C) (1) THE APPLICANT MAY DELAY SUBMITTING THE PHASE II SITE
2 ASSESSMENT UNTIL AFTER THE APPLICATION AND APPLICABLE FEES ARE
3 SUBMITTED.

4 (2) IF AN APPLICANT DELAYS FILING A PHASE II SITE ASSESSMENT, ALL
5 RELATED DEADLINES FOR PUBLIC NOTICE AND ACTION BY THE DEPARTMENT SHALL
6 BE EXTENDED AND CONFORM WITH THE DATE THE PHASE II SITE ASSESSMENT IS
7 SUBMITTED AND THE APPLICATION IS COMPLETE.

8 (D) (1) ON SUBMISSION OF THE APPLICATION, THE DEPARTMENT SHALL
9 PUBLISH A NOTICE OF THE APPLICATION ON ITS WEBSITE AND THE APPLICANT
10 SHALL POST NOTICE AT THE PROPERTY THAT IS THE SUBJECT OF THE APPLICATION.

11 (2) THE NOTICES REQUIRED UNDER PARAGRAPH (1) OF THIS
12 SUBSECTION SHALL INCLUDE:

13 (I) THE NAME AND ADDRESS OF THE APPLICANT AND THE
14 PROPERTY; AND

15 (II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
16 OFFICE WITHIN THE DEPARTMENT FROM WHICH INFORMATION ABOUT THE
17 APPLICATION MAY BE OBTAINED.

18 [(b)] (E) (1) (i) The Department shall notify the applicant in writing,
19 within [60] 45 days after receipt of the application, whether:

20 1. The application, including the applicant's status as a
21 responsible person or an inculpable person, is approved;

22 2. The application is denied or incomplete; or

23 3. The Department has no further requirements related to
24 the investigation of controlled hazardous substances at the eligible property as
25 provided in paragraph (3) of this subsection.

26 (ii) If the Department denies the application or determines that the
27 application is incomplete, the Department shall provide to the applicant the reasons
28 for its decision in writing.

29 (2) (i) An applicant may resubmit an application within 60 days after
30 receipt of notice of the Department's decision to deny the initial application or
31 determination that the application is incomplete.

32 (ii) The Department shall approve or deny a resubmitted or revised
33 application within 30 days after receipt.

34 (3) If the Department notifies the applicant that the Department has no
35 further requirements at the eligible property in accordance with paragraph (1)(i)3 of
36 this subsection, the Department shall include a statement that this notice does not:

1 (i) Subject to the provisions of § 7-505 of this subtitle, prevent the
2 Department from taking action against any person to prevent or abate an imminent
3 and substantial endangerment to the public health or the environment at the eligible
4 property;

5 (ii) Remain in effect if the notice of no further requirements is
6 obtained through fraud or a material misrepresentation;

7 (iii) Affect the authority of the Department to take any action
8 against a responsible person concerning previously undiscovered contamination at an
9 eligible property after a no further requirements notice has been issued by the
10 Department; or

11 (iv) Affect the authority of the Department to require additional
12 cleanup for future activities at the site that result in contamination by hazardous
13 substances.

14 (4) THE NO FURTHER REQUIREMENTS NOTICE SHALL PROVIDE THE
15 SAME LIABILITY PROTECTIONS AS PROVIDED IN § 7-513(B)(3) AND (4) OF THIS
16 SUBTITLE.

17 (5) THE PARTICIPANT AND ANY SUCCESSORS IN INTEREST IN A
18 PROPERTY SUBJECT TO A NO FURTHER REQUIREMENTS NOTICE SHALL CONTINUE
19 TO BE PROTECTED FROM LIABILITY IN THE EVENT OF ANY VIOLATION OF THE
20 CONDITIONS PLACED ON THE USE OF THE PROPERTY, PROVIDED THAT THE
21 PARTICIPANT AND ANY SUCCESSORS IN INTEREST DID NOT CAUSE OR CONTRIBUTE
22 TO THE VIOLATION.

23 [(c)] (F) (1) The Department shall deny an application if:

24 (i) The applicant is not an eligible applicant;

25 (ii) The property is not an eligible property; or

26 (iii) The property was initially contaminated by a release of
27 hazardous substances after October 1, 1997 unless:

28 1. The property is acquired by an inculpable person; or

29 2. The contamination was caused by an act of God.

30 (2) For the purposes of paragraph (1) (iii) of this subsection, any property
31 identified in the Comprehensive Environmental Response, Compensation, and
32 Liability Information System in accordance with the federal act as of October 1, 1997
33 is presumed to have been initially contaminated on or before October 1, 1997.

34 [(d)] (1) If the direct costs of review of the application and administration and
35 oversight of the response action plan exceed the application fee, the Department shall
36 require an applicant or participant to pay to the Department the additional costs
37 incurred by the Department.

1 (2) If the direct costs of review of the application and administration and
2 oversight of the response action plan are less than the application fee, the
3 Department shall refund to the applicant or participant the difference between the
4 costs incurred and the application fee.

5 (e)] (G) (1) Within 30 days after receiving notification of approval of an
6 application, a participant shall inform the Department in writing whether the
7 participant intends to proceed or withdraw from the Program.

8 (2) If a participant does not notify the Department of the participant's
9 intent to proceed or withdraw in accordance with paragraph (1) of this subsection, the
10 application will be deemed to be withdrawn.

11 [(f)] (H) A determination by the Department that it has no further
12 requirements may be transferred to a subsequent purchaser of the property provided
13 that the subsequent purchaser did not cause or contribute to the contamination.

14 [(g)] (I) (1) If a determination by the Department that it has no further
15 requirements is conditioned on certain uses of the property or on the maintenance of
16 certain conditions, the participant shall record the determination in the land records
17 of the local jurisdiction within 30 days after receiving the determination.

18 (2) If the determination by the Department that it has no further
19 requirements is conditioned on certain uses of the property or on the maintenance of
20 certain conditions and the participant fails to record the determination in the land
21 records in accordance with paragraph (1) of this subsection, the determination shall
22 be void.

23 (3) (I) IF A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO
24 FURTHER REQUIREMENTS AT A PROPERTY IS CONDITIONED ON CERTAIN USES OF
25 THE PROPERTY OR ON THE MAINTENANCE OF CERTAIN CONDITIONS, THE
26 PARTICIPANT SHALL SEND A COPY OF THE DETERMINATION TO A ONE-CALL SYSTEM
27 AS DEFINED IN § 12-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

28 (II) ANY OBLIGATION FOR THE PARTICIPANT TO SEND THE
29 INFORMATION REQUIRED UNDER § 7-506(D)(2) OF THIS SECTION DOES NOT NEGATE
30 THE OBLIGATION OF AN OWNER AS DEFINED IN § 12-101(F) OF THE PUBLIC UTILITY
31 COMPANIES ARTICLE TO BECOME A MEMBER OF THE ONE-CALL SYSTEM UNDER
32 TITLE 12 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

33 (J) SUBJECT TO THE PROVISIONS OF § 7-516(A) OF THIS SUBTITLE AND
34 APPROVAL BY THE DEPARTMENT, IF AN OWNER OF AN ELIGIBLE PROPERTY THAT
35 HAS LIMITED PERMISSIBLE USES WANTS TO CHANGE THE USE OF THE ELIGIBLE
36 PROPERTY, THE OWNER, SUBJECT TO APPROVAL BY THE DEPARTMENT, IS
37 RESPONSIBLE FOR THE COST OF CLEANING UP THE PROPERTY TO THE APPROPRIATE
38 STANDARD.

1 7-506.1.

2 (A) IF A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO FURTHER
3 REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR ON THE
4 MAINTENANCE OF CERTAIN CONDITIONS, THE PARTICIPANT SHALL PAY TO THE
5 DEPARTMENT A FEE OF \$2,000.

6 (B) IF A CERTIFICATE OF COMPLETION IS CONDITIONED ON THE
7 PERMISSIBLE USE OF THE PROPERTY, THE PARTICIPANT SHALL PAY TO THE
8 DEPARTMENT A FEE OF \$2,000.

9 (C) ON A REQUEST BY A PARTICIPANT TO ALTER A RECORD OF
10 DETERMINATION IN THE LAND RECORDS FOR AN ELIGIBLE PROPERTY WITH
11 CONDITIONS IN ACCORDANCE WITH § 7-506(I) OR § 7-514(D) OF THIS SUBTITLE, THE
12 PARTICIPANT SHALL PAY TO THE DEPARTMENT A FEE OF \$2,000.

13 7-509.

14 (a) Upon submission of a proposed response action plan, the participant:

15 (1) Shall publish a notice of a proposed response action plan once a week
16 for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the
17 geographical area in which the eligible property is located that shall include:

18 (i) A summary of the proposed response action plan;

19 (ii) The name and address of the participant and eligible property;

20 (iii) The name, address, and telephone number of the office within
21 the Department from which information about the proposed response action plan may
22 be obtained;

23 (iv) An address to which persons may submit written comments
24 about the proposed response action [plan or request a public informational meeting;
25 and] PLAN;

26 (v) A deadline for the close of the public comment period by which
27 written comments [or requests for a public informational meeting] must be received
28 by the Department; and

29 (VI) THE DATE AND LOCATION OF THE PUBLIC INFORMATION
30 MEETING; AND

31 (2) Shall post at the eligible property a notice of intent to conduct a
32 response action plan at that property.

33 (b) The Department shall receive written comments from the public for 30
34 days after publication and posting required under this section.

35 (c) The Department shall hold a public informational meeting on the proposed
36 response action plan at the participant's expense within [30] 45 days after [the

1 Department receives a written request for a meeting from the applicant or the public]
2 THE PUBLICATION OF THE NOTICE IN ACCORDANCE WITH SUBSECTION (A)(1) OF
3 THIS SECTION.

4 7-510.

5 (a) (1) The Department shall approve a response action plan FOR AN
6 ELIGIBLE PROPERTY if the Department determines that the response action plan
7 protects public health and the environment.

8 (2) THE DEPARTMENT SHALL APPROVE A RESPONSE ACTION PLAN FOR
9 A PORTION OF THE PROPERTY IN ACCORDANCE WITH § 7-501(G)(1) OF THIS SUBTITLE,
10 UNLESS THE DEPARTMENT DETERMINES THAT CONTAMINATION ON THE
11 REMAINDER OF THE PROPERTY REPRESENTS AN IMMINENT AND SUBSTANTIAL
12 ENDANGERMENT TO PUBLIC HEALTH OR THE ENVIRONMENT.

13 7-511.

14 (a) Within [120] 75 days after the Department has received a proposed
15 response action plan, the Department, after considering any comments the
16 Department has received under § 7-509 of this subtitle, shall notify the participant in
17 writing that:

18 (1) The response action plan has been approved; or

19 (2) The response action plan has been rejected and shall state the
20 modifications in the response action plan that are necessary to receive the
21 Department's approval.

22 7-512.

23 (a) Except as provided in subsections (b) and (c) of this section, a participant
24 may withdraw from the Program at the time of a pending application or response
25 action plan, or after receiving a certificate of completion, and may not be obligated to
26 complete an application or a response action plan if the participant:

27 (1) Provides 10 days written notice of the anticipated withdrawal to the
28 Department;

29 (2) Stabilizes and secures the eligible property to the satisfaction of the
30 Department to ensure protection of the public health and the environment; and

31 (3) Forfeits any [expended] application [and oversight] fees.

32 7-514.

33 (a) A response action plan approval letter does not:

34 (1) Subject to the provisions of § 7-505 of this subtitle, prevent the
35 Department from taking action against any person to prevent or abate an imminent

1 and substantial endangerment to the public health or the environment at the eligible
2 property;

3 (2) Remain in effect if the response action plan approval letter is
4 obtained through fraud or a material misrepresentation;

5 (3) Affect the authority of the Department to take any action against any
6 person concerning new contamination or the exacerbation of existing contamination
7 at an eligible property after a response action plan approval letter has been issued by
8 the Department;

9 (4) Affect the authority of the Department to take any action against a
10 responsible person concerning previously undiscovered contamination at an eligible
11 property after a response action plan approval letter has been issued by the
12 Department;

13 (5) Prevent the Department from taking action against any person who
14 is responsible for long-term monitoring and maintenance as provided in the response
15 action plan; or

16 (6) Prevent the Department from taking action against any person who
17 does not comply with conditions on the permissible use of the eligible property
18 contained in the response action plan approval letter.

19 (b) A certificate of completion does not:

20 (1) Subject to the provisions of § 7-505 of this subtitle, prevent the
21 Department from taking action against any person to prevent or abate an imminent
22 and substantial endangerment to the public health or the environment at the eligible
23 property;

24 (2) Remain in effect if the certificate of completion is obtained through
25 fraud or a material misrepresentation;

26 (3) Affect the authority of the Department to take any action against any
27 person concerning new contamination or exacerbation of existing contamination at an
28 eligible property after a certificate of completion has been issued by the Department;

29 (4) Affect the authority of the Department to take any action against a
30 responsible person concerning previously undiscovered contamination at an eligible
31 property after a certificate of completion has been issued by the Department;

32 (5) Prevent the Department from taking action against any person who
33 is responsible for long-term monitoring and maintenance for failure to comply with
34 the response action plan;

35 (6) Prevent the Department from taking action against any person who
36 does not comply with conditions on the permissible use of the eligible property
37 contained in the certificate of completion; or

1 (7) Subject to the provisions of § 7-512 of this subtitle, prevent the
2 Department from requiring any person to take further action if the eligible property
3 fails to meet the applicable cleanup criteria set forth in the response action plan
4 approved by the Department.

5 (c) A response action plan approval letter or a certificate of completion may be
6 transferred to any person whose actions did not cause or contribute to the
7 contamination.

8 (d) (1) If a certificate of completion is conditioned on the permissible use of
9 the property [for industrial or commercial purposes], the participant shall record the
10 certificate of completion in the land records of the local jurisdiction within 30 days
11 after receiving the certificate.

12 (2) If the certificate of completion has a conditioned use and the
13 participant fails to record the certificate of completion in the land records in
14 accordance with paragraph (1) of this subsection, the certificate of completion shall be
15 void.

16 (3) (I) IF A CERTIFICATE OF COMPLETION IS CONDITIONED ON THE
17 PERMISSIBLE USE OF THE PROPERTY, THE PARTICIPANT SHALL SEND A COPY OF THE
18 CERTIFICATE OF COMPLETION TO A ONE-CALL SYSTEM, AS DEFINED IN § 12-101 OF
19 THE PUBLIC UTILITY COMPANIES ARTICLE.

20 (II) ANY OBLIGATION FOR THE PARTICIPANT TO SEND THE
21 INFORMATION REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT
22 NEGATE THE OBLIGATION OF AN OWNER AS DEFINED UNDER § 12-101(F) OF THE
23 PUBLIC UTILITY COMPANIES ARTICLE TO BECOME A MEMBER OF THE ONE-CALL
24 SYSTEM UNDER TITLE 12 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

25 (e) Subject to the provisions of § 7-516(a) of this subtitle, if an owner of an
26 eligible property that has limited permissible uses wants to change the use of the
27 eligible property, the owner, subject to approval by the Department, is responsible for
28 the cost of cleaning up the eligible property to the appropriate standard.

29 (F) THE PARTICIPANT AND ANY SUCCESSORS IN INTEREST IN A PROPERTY
30 SUBJECT TO A CERTIFICATE OF COMPLETION SHALL CONTINUE TO BE PROTECTED
31 FROM LIABILITY IN THE EVENT OF ANY VIOLATION OF THE CONDITIONS PLACED ON
32 THE USE OF THE PROPERTY, PROVIDED THAT THE PARTICIPANT AND ANY
33 SUCCESSORS IN INTEREST DID NOT CAUSE OR CONTRIBUTE TO THE VIOLATION.

34 7-515.

35 (A) The provisions of §§ 7-256 through 7-268 of this title shall be used and
36 shall apply to enforce violations of:

37 (1) This subtitle; or

38 (2) Any regulation adopted under this subtitle.

1 (B) ANY ACTION TAKEN BY THE DEPARTMENT UNDER THIS SUBTITLE AT A
2 SITE UNDER ACTIVE ENFORCEMENT MAY NOT:

3 (1) NEGATE THE TERMS AND CONDITIONS OF ANY OUTSTANDING
4 ACTIVE ENFORCEMENT ORDER, DECREE, JUDGMENT, PERMIT, OR OTHER DOCUMENT
5 THAT ADDRESSES ENVIRONMENTAL CONTAMINATION AT THE SITE; OR

6 (2) RELIEVE ANY PERSON WHO IS THE SUBJECT OF AN ACTIVE
7 ENFORCEMENT ACTION FROM LIABILITY FOR PENALTIES UNDER THE
8 ENFORCEMENT ACTION.

9 **Article - Real Property**

10 12-111.

11 (f) In Anne Arundel County OR BALTIMORE CITY, an agent or employee, or
12 one or more assistants of the county, after real and bona fide effort to notify the
13 occupant or the owner, if the land is unoccupied or if the occupant is not the owner,
14 may enter on any private land to make test borings and soil tests and obtain
15 information related to such tests for the purpose of determining the possibility of
16 public use of the property. If an agent, employee, or assistant is refused permission to
17 enter or remain on any private land for the purposes set out in this subsection, Anne
18 Arundel County OR BALTIMORE CITY may apply to a law court of the county where
19 the property or any part of it is located for an order directing that its agent, employee,
20 or assistant be permitted to enter and remain on the land to the extent necessary to
21 carry out the purposes authorized by this subsection. The court may require that
22 [Anne Arundel County] THE APPLYING JURISDICTION post a bond in an amount
23 sufficient to reimburse any person for damages reasonably estimated to be caused by
24 test borings, soil tests, and related activities. If any person enters on any private land
25 under the authority of this section or of any court order passed pursuant to it and
26 damages or destroys any land or personal property on it, the owner of the property
27 has a cause of action for damages against [Anne Arundel County] THE JURISDICTION
28 THAT DID NOT AUTHORIZE THE ENTRANCE. Any person who knows of an order issued
29 under this subsection and who obstructs any agent, employee or any assistant acting
30 under the authority of the order may be punished for contempt of court.

31 **Article 83A - Business and Economic Development**

32 5-1401.

33 (j) (1) "Brownfields site" means:

34 (i) An eligible property, as defined in § 7-501 of the Environment
35 Article, that is:

36 1. Owned or operated by:

37 A. An] AN inculpable person, as defined in § 7-501 of the
38 Environment Article]; or

1 B. An innocent purchaser that meets the requirements set
2 forth in § 7-201(x)(2)(i) of the Environment Article]; and

3 2. Located in a county or municipal corporation that has
4 elected to participate in the Brownfields Revitalization Incentive Program in
5 accordance with § 5-1408(a) of this subtitle; or

6 (ii) Property where there is a release, discharge, or threatened
7 release of oil, as defined in § 4-401 of the Environment Article, that is:

8 1. Subject to [a corrective action plan approved by the
9 Department of the Environment in accordance with] THE PROVISIONS OF Title 4 of
10 the Environment Article; and

11 2. Located in a county or municipal corporation that has
12 elected to participate in the Brownfields Revitalization Incentive Program in
13 accordance with § 5-1408(a) of this subtitle.

14 (2) "Brownfields site" does not include property that is owned or
15 operated by a responsible person or a person responsible for the discharge.

16 5-1408.

17 (a) A county or municipal corporation may elect to participate in the
18 Brownfields Revitalization Incentive Program by:

19 (1) (I) Submitting to the Department a list of potential Brownfields
20 sites in the county or municipal corporation, ranked in the order of priority for
21 redevelopment recommended by the county or municipal corporation; and

22 [(2)] (II) Annually updating the list submitted under [paragraph (1)]
23 ITEM (I) of this [subsection] ITEM; OR

24 (2) (I) ENACTING LEGISLATION GRANTING PROPERTY TAX CREDITS
25 IN ACCORDANCE WITH THE REQUIREMENTS OF § 9-229 OF THE TAX - PROPERTY
26 ARTICLE; AND

27 (II) NOTIFYING THE DEPARTMENT OF THE LEGISLATION.

28 **Article - Tax - Property**

29 9-229.

30 (g) A [proportional share of a] taxing jurisdiction's contribution for each
31 qualified Brownfields site to the Maryland Economic Development Assistance Fund
32 under subsection (c)(2) of this section shall be [designated for financial incentives to
33 be provided for qualified Brownfields sites in the jurisdiction making that
34 contribution] USED ONLY FOR BROWNFIELDS SITES IN THE TAXING JURISDICTIONS
35 THAT HAVE ENACTED A BROWNFIELDS PROPERTY TAX CREDIT ORDINANCE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the
2 Environment shall convene a work group from representatives of the Department of
3 Planning, the Department of Business and Economic Development, various sectors of
4 local government, real estate professionals, the business community, the banking
5 industry, the environmental community, and members of the public and undertake a
6 review of the Universal Environmental Covenants Act proposed by the National
7 Conference of Commissioners on Uniform State Laws. The work group shall make
8 recommendations to the Department of the Environment, and, in accordance with §
9 2-1246 of the State Government Article, the Senate Education, Health, and
10 Environmental Affairs Committee and the House Environmental Matters Committee
11 on or before December 31, 2004.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2004.